

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHARLES EVANS, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">v.</div> FEDERAL BUREAU OF INVESTIGATIONS, <div style="text-align: center;">Defendant.</div>))))))))))	CASE NO. 8:09CV207 <div style="text-align: center;">MEMORANDUM AND ORDER</div>
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Plaintiff filed his Complaint in this matter on June 23, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [6](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

_____Plaintiff filed his Complaint on June 23, 2009, against the Federal Bureau of Investigations (“FBI”). (Filing No. [1](#) at CM/ECF p. 1.) Condensed and summarized, Plaintiff alleges that “Kelli C. Sparks . . . illegally brandished [an] assault rifle,” but “Don Kleine” would not prosecute her. (*Id.*) Plaintiff asks the court to issue a “writ of mandamus compelling [the FBI] to discharge their function and arrest Kelli C. Sparks.” (*Id.*)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)\(2\)](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

Therefore, where a pro se plaintiff does not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [*Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 \(2007\)](#) (overruling [*Conley v. Gibson*, 355 U.S. 41 \(1967\)](#), and setting new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [*Martin v. Sargent*, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [*Burke v. North Dakota Dep’t of Corr. & Rehab.*, 294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

A private plaintiff cannot force a criminal prosecution because the “authority to initiate a criminal complaint rests exclusively with state and federal prosecutors.” See [*Collyer v. Darling*, 98 F.3d 211, 222 \(6th Cir. 1996\)](#); see also [*United States v. Batchelder*, 442 U.S. 114, 124 \(1979\)](#) (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion.”); [*Rzayeva v. United States*, 492 F.Supp. 2d 60, 73 \(D. Conn. 2007\)](#) (“[T]his Court lacks jurisdiction to order federal agents to initiate a prosecution.”). In light of these findings, Plaintiff’s request for a “writ of mandamus” to compel the FBI to arrest “Kelli C. Sparks” must be dismissed.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Complaint (Filing No. 1) is dismissed without prejudice.; and

2. A separate Judgment will be entered in accordance with this Memorandum and Order.

DATED this 12th day of August, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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